

000096

|   |  |  |
|---|--|--|
| State of Alabama<br>Unified Judicial System<br>Form ARAP- 26 (front) 8/91 | <b>COURT OF CRIMINAL APPEALS<br/>DOCKETING STATEMENT</b> | Criminal Appeal Number<br><u>CR-002143</u> |
|---|--|--|

**A. GENERAL INFORMATION:**

☐ CIRCUIT COURT    ☒ DISTRICT COURT    ☐ JUVENILE COURT OF Russell COUNTY  
Roy David Heath, Appellant

v. ☒ STATE OF ALABAMA    ☐ MUNICIPALITY OF \_\_\_\_\_

|  |  |  |
|--|--|--|
| Case Number<br><u>57/CC 2001 000030.00</u>   | Date of Complaint or Indictment<br><u>4/9/01</u> | Date of Judgment/Sentence/Order<br><u>5/31/01</u>  |
| Number of Days of Trial/Hearing<br><u>N/A</u> Days   | Date of Notice of Appeal<br>Oral: _____          | Written: <u>7/11/01</u>  |
| Indigent Status Requested: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |  | Indigent Status Granted: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

**B. REPRESENTATION:**

Is Attorney Appointed or Retained? ☐ Appointed ☐ Retained.    If no attorney, will appellant represent self? ☐ Yes ☒ No

|  |               |                            |
|--|---------------|----------------------------|
| Appellant's Attorney (Appellant if pro se) (Attach additional pages if necessary)<br><u>John Dutton / deceased / pro se since 8/6/01</u> |               | Telephone Number<br>_____  |
| Address<br>_____   | City<br>_____ | State _____ Zip Code _____ |

**C. CODEFENDANTS:** List each CODEFENDANT and the codefendant's case number.

|   |                                 |
|---|---------------------------------|
| Codefendant<br><u>Darrin Minnis</u>       | Case Number<br><u>CC 01-759</u> |
| Codefendant<br><u>Jenna Hockaba Heath</u> | Case Number<br>_____            |
| Codefendant<br>_____                      | Case Number<br>_____            |

**D. TYPE OF APPEAL:** Please check the applicable block.

|  |  |  |
|--|--|--|
| 1 <input checked="" type="checkbox"/> State Conviction | 4 <input type="checkbox"/> Pretrial Order        | 7 <input type="checkbox"/> Juvenile Transfer Order |
| 2 <input type="checkbox"/> Post-Conviction Remedy      | 5 <input type="checkbox"/> Contempt Adjudication | 8 <input type="checkbox"/> Juvenile Delinquency    |
| 3 <input type="checkbox"/> Probation Revocation        | 6 <input type="checkbox"/> Municipal Conviction  | 9 <input type="checkbox"/> Habeas Corpus Petition  |
| 10 <input type="checkbox"/> Other (Specify) _____      |  |  |

**E. UNDERLYING CONVICTION/CHARGE:** Regardless of the type of appeal checked in Section D, please check the box beside each offense category for which the appellant has been convicted or charged as it relates to this appeal. Also include the applicable section of the Code of Alabama for State convictions.

|   |  |  |
|---|--|--|
| 1 <input type="checkbox"/> Capital Offense - § _____                  | 6 <input type="checkbox"/> Trafficking in Drugs - § _____            | 11 <input type="checkbox"/> Fraudulent Practices - § _____                                   |
| 2 <input type="checkbox"/> Homicide - § _____                         | 7 <input type="checkbox"/> Theft - § _____                           | 12 <input type="checkbox"/> Offense Against Family - § _____                                 |
| 3 <input type="checkbox"/> Assault - § _____                          | 8 <input type="checkbox"/> Damage or Intrusion to Property - § _____ | 13 <input type="checkbox"/> Traffic - DUI - § _____  |
| 4 <input type="checkbox"/> Kidnapping/Unlawful Imprisonment - § _____ | 9 <input type="checkbox"/> Escape - § _____                          | 14 <input type="checkbox"/> Traffic - Other - § _____  |
| 5 <input checked="" type="checkbox"/> Drug Possession - § _____       | 10 <input type="checkbox"/> Weapons/Firearms - § _____               | 15 <input checked="" type="checkbox"/> Miscellaneous (Specify):<br><u>sale of contraband</u> |

**F. DEATH PENALTY:**

Does this appeal involve a case where the death penalty has been imposed? ☐ Yes ☒ No

**G. TRANSCRIPT:**

1. Will the record on appeal have a reporter's transcript? ☒ Yes ☐ No

2. If the answer to question "1" is "Yes," state the date the Reporter's Transcript Order was filed. OCT. 2, '01 (Date)

3. If the answer to question "1" is "No":

(a) Will a stipulation of facts be filed with the circuit clerk? ☒ Yes ☐ No

(b) Will the parties stipulate that only questions of law are involved and will the trial court certify the questions? ☒ Yes ☐ No

NOTE: If the appeal is from the district or juvenile court and the answer to question "1" is "No," then a positive response is required for question 3(a) or 3(b).

000097

Form ARAP- 26 (back) 8/91

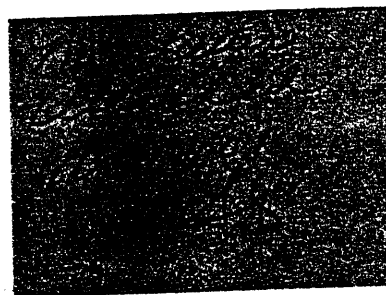
## COURT OF CRIMINAL APPEALS DOCKETING STATEMENT

H. POST-JUDGMENT MOTIONS: List all post-judgment motions by date of filing, type, and date of disposition (whether by trial court order or by the provisions of Rules 20.3 and 24.4 (ARCrP)):

| DATE OF FILING |     |      | TYPE OF POST-JUDGMENT MOTION | DATE OF DISPOSITION |     |      |
|----------------|-----|------|------------------------------|---------------------|-----|------|
| Month          | Day | Year |                              | Month               | Day | Year |
| 7              | 11  | 01   | Appeal                       |                     |     |      |
|                |     |      |                              |                     |     |      |
|                |     |      |                              |                     |     |      |
|                |     |      |                              |                     |     |      |
|                |     |      |                              |                     |     |      |

I. NATURE OF THE CASE: Without argument, briefly summarize the facts of the case.

See Attached Letter



J. ISSUE(S) ON APPEAL: Briefly state the anticipated issues that will be presented on appeal. (Attach additional pages if necessary.)

See Attached letter

K. SIGNATURE:

September 26, 01  
Date

*Lucas Heath*  
Signature of Attorney/ Party Filing this Form

000098

|  |  |   |
|--|--|---|
| State of Alabama<br>Unified Judicial System<br>Form ARAP-1C 8/91 | <b>REPORTER'S TRANSCRIPT ORDER -- CRIMINAL</b><br>See Rules 10(c) and 11(b) of the<br>Alabama Rules of Appellate Procedure (A.R. App.P.) | Criminal Appeal Number<br><u>CR - 00-2143</u> |
|--|--|---|

TO BE COMPLETED BY COUNSEL FOR THE APPELLANT OR BY THE APPELLANT IF NOT REPRESENTED AND FILED WITH THE WRITTEN NOTICE OF APPEAL OR FILED WITHIN 7 DAYS AFTER ORAL NOTICE OF APPEAL IS GIVEN.

☐ CIRCUIT COURT    ☒ DISTRICT COURT    ☐ JUVENILE COURT OF \_\_\_\_\_ COUNTY  
Russell  
Roy David Heath, Appellant

V.    ☒ STATE OF ALABAMA    ☐ MUNICIPALITY OF \_\_\_\_\_

|   |   |
|---|---|
| Case Number<br><u>57/CC 2001 000030.00 / 36</u> | Date of Judgment/Sentence/Order<br><u>5/31/01</u>   |
| Date of Notice of Appeal<br>Oral: _____         | Indigent Status Granted:<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

Written: 7/11/01

**PART 1. TO BE SIGNED IF THE APPEAL WILL NOT HAVE A COURT REPORTER'S TRANSCRIPT:**

I CERTIFY THAT NO REPORTER'S TRANSCRIPT IS EXPECTED AND THAT THE RECORD ON APPEAL SHALL CONSIST OF THE CLERK'S RECORD ONLY. IF THE APPEAL IS FROM DISTRICT COURT OR JUVENILE COURT, I ALSO CERTIFY (1) THAT A STIPULATION OF FACTS WILL BE INCLUDED IN THE CLERK'S RECORD AND THAT THE APPELLANT WAIVES HIS RIGHT TO A JURY TRIAL IF SO ENTITLED; OR (2) THAT THE PARTIES HAVE STIPULATED THAT ONLY QUESTIONS OF LAW ARE INVOLVED AND THAT THE QUESTIONS WILL BE CERTIFIED BY THE JUVENILE/DISTRICT COURT FOR INCLUSION IN THE CLERK'S RECORD (SEE RULE 28(A)(1), ALABAMA RULES OF JUVENILE PROCEDURE, AND §12-12-72, CODE OF ALABAMA 1975)

Signature \_\_\_\_\_ Date \_\_\_\_\_ Print or Type Name \_\_\_\_\_

**PART 2. DESIGNATION OF PROCEEDINGS TO BE TRANSCRIBED.** Request is hereby made to the court reporter(s) indicated below for a transcript of the following proceedings in the above referenced case (see Rule 10(c)(2), Alabama Rules of Appellate Procedure (A R App P )):

**MARK PROCEEDINGS REQUESTED:**

- A. ☒ **TRIAL PROCEEDINGS** - Although this designation will include the judgment and sentence proceedings, a transcript of the organization of the jury and arguments of counsel must be designated separately
- B. ☒ **ORGANIZATION OF THE JURY** - This designation will include voir dire examination and challenges for cause. Note that in noncapital cases the voir dire of the jury will not be recorded unless the trial judge so directs. (See Rule 19 4, ARCrP)
- C. ☒ **ARGUMENTS OF COUNSEL** - Note that in noncapital cases the arguments of counsel will not be recorded unless the trial judge so directs. (See Rule 19 4, ARCrP)

COURT REPORTER(S)  
Linda S. Wilson

IN ADDITION TO ANY PROCEEDINGS DESIGNATED ABOVE, SPECIAL REQUEST IS HEREBY MADE TO INCLUDE THE FOLLOWING PROCEEDINGS IN THE REPORTER'S TRANSCRIPT PORTION OF THE RECORD ON APPEAL. (ATTACH ADDITIONAL PAGES IF NECESSARY):

| ADDITIONAL PROCEEDINGS REQUESTED | DATE  | COURT REPORTER(S) |
|----------------------------------|-------|-------------------|
| D. _____                         | _____ | _____             |
| E. _____                         | _____ | _____             |
| F. _____                         | _____ | _____             |
| G. _____                         | _____ | _____             |

**IMPORTANT NOTICE:** The court reporter who reported the proceedings for which a transcript is requested must be identified on this form to be effective. Additionally, it is important to note that the appellant may not be permitted to raise any issue on appeal relating to any proceedings in the case that are not specifically designated on this form for inclusion in the reporter's transcript. A general designation such as "all proceedings" is not sufficient. (See Rule 10(c)(2), A R App P)

**PART 3. MUST BE SIGNED IF THE APPEAL WILL HAVE A COURT REPORTER'S TRANSCRIPT:**

I CERTIFY THAT I HAVE DISTRIBUTED THIS FORM AS SET OUT BELOW. I ALSO CERTIFY (1) THAT I HAVE MADE SATISFACTORY FINANCIAL ARRANGEMENTS WITH EACH COURT REPORTER LISTED ABOVE FOR PREPARING HIS OR HER PORTION OF THE REPORTER'S TRANSCRIPT HEREIN REQUESTED; OR (2) THAT THE APPELLANT PROCEEDED AT TRIAL AS AN INDIGENT AND THAT THAT STATUS HAS NOT BEEN REVOKED; OR, (3) THAT THE APPELLANT HAS BEEN GIVEN PERMISSION TO PROCEED ON APPEAL IN FORMA PAUPERIS

Signature Roy David Heath Date 8/9/01 Print or Type Name Roy David Heath

**DISTRIBUTION:** Original filed with Clerk of Trial Court and copies mailed to: (1) Clerk of the Court of Criminal Appeals; (2) the District Attorney; (3) the Attorney General or the municipal prosecutor in lieu of the District Attorney and the Attorney General if the appeal is from a municipal conviction; and (4) to each Court Reporter who reported proceedings designated for inclusion in the reporter's transcript.

In The Circuit Court Of Russell County  
State Of Alabama

Heath, David, Roy  
Petitioner

Vs.

State Of Alabama,  
Respondents

FILED IN OFFICE  
2001 OCT 25 AM 11:55  
JANET J. ROY, CLERK  
RUSSELL CO., AL

Case No. CC-01-30  
CC-01-36(x2)

Motion For Appointment Of Counsel:

The petitioner in the above styled action hereby moves this Honorable Court for an order entered directed that counsel be appointed to assist petitioner in this matter. This motion is supported by the following facts.

Facts In Support:

The petitioner is an inmate of the Alabama Department of Corrections with neither the means or money to retain counsel to assist him in this matter.

The petitioner is lack in legal knowledge and do not know how to proper prepare this matter for Court proceedings.

The issues involved in this matter are complex and require research and investigation that the petitioner is unable to do, because of being in prison.

As a matter of law petitioner is entitled to appointment of counsel to assist him in this matter.

The respondents will not be prejudice by the appointment of counsel in this matter.

Therefore For Good Cause:

Petitioner request that this Court appoint counsel to assist him in this matter.

Petitioner also request such other relief that this Court deems just in this matter.

Dated this 22<sup>ND</sup> day of October 2004 RDH

Rory Daniel Howell

Certificate Of Service:

I hereby certify that I have mailed a true and correct copy of the above to all parties by placing the same in the United States mail all postage paid.

Dated this 22<sup>ND</sup> day of October 2004 RDH

Rory Daniel Howell

000101

|   |  |                                   |
|---|--|-----------------------------------|
| State of Alabama<br>Unified Judicial System<br><br>Form C-10 Rev 6/88 | <b>AFFIDAVIT of SUBSTANTIAL<br/>HARDSHIP and ORDER</b> | Case Number<br><u>CC01-30, 36</u> |
|---|--|-----------------------------------|

|                     |                                    |              |                         |        |
|---------------------|------------------------------------|--------------|-------------------------|--------|
| IN THE              | <u>26th Judicial Circuit</u>       | COURT OF     | <u>Russell</u>          | COUNTY |
| Plaintiff/State     | <u>Heath, David</u>                | v. Defendant | <u>State of Alabama</u> |        |
| IN THE MATTER OF:   | <u>DIRECT APPEAL</u>               |              |                         |        |
| TYPE OF PROCEEDING: | <u>CHARGE: S/3A-12-211 et seq.</u> |              |                         |        |

☐ CIVIL CASE—I, because of substantial hardship, am unable to pay the docket fee and service fees in this case. I request that payment of these fees be waived initially and taxed as costs at the conclusion of the case.

☐ CIVIL CASE (such as paternity, support, termination of parental rights) — I request an attorney be appointed for me.

☒ CRIMINAL CASE—I am financially unable to hire an attorney and request that the Court appoint one for me.

|  |  |   |
|--|--|---|
| INCOME / EMPLOYMENT  | <b>AFFIDAVIT</b>   | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
| A. Do you have a job or work for yourself?   | Employer's name and address _____  |   |
|  | How much money do you take home each week? _____   | + \$ <u>NA</u>  |
| B. If unemployed, give month and year of last employment and amount earned per month | <u>April 99</u> <u>99</u>  | \$ <u>1200</u>  |
| C. Does your husband or wife have a job?   | <u>NA</u>  | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
|  | Employer's name and address _____  |   |
|  | How much money does he/she take home each week? _____  | + \$ <u>NA</u>  |
| D. Do you receive money or benefits from any other source?                           | (Example: retirement pay, social security, workmen's compensation, unemployment compensation, food stamps, rent payments, interest, dividends, etc.) | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
|  | How much do you receive each month? _____  | + \$ <u>NA</u>  |

|        |   |   |
|--------|---|---|
| ASSETS | A. Do you have any money in any bank, savings and loan, credit union, or any other place, including cash on hand? _____ How much? _____<br>Where? _____ | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
|        | B. Do you own anything else of value? (Land, house, boat, television, stereo, jewelry, car, truck, van, stocks, bonds, etc.)<br>What? _____             |   |
|        | Total Value + _____   |   |

|            |   |   |
|------------|---|---|
| DEPENDENTS | A. Are you: _____ Single <input checked="" type="checkbox"/> Married _____ Widowed _____ Divorced _____<br>_____ Separated? | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
|            | B. Do you have any dependents?<br>Who and what relationship? <u>Scott Huckaba 3 Refused HUCKABA</u><br><u>STEP children</u> |   |

000102

What does it cost you to live each month?

\$ 50/00/80

D  
E  
B  
T  
S

| Creditor               | Total Debt  | Monthly Payment |
|------------------------|-------------|-----------------|
| Loans                  |             | NA              |
| Charge Accounts        |             | NA              |
| House or rent payments |             | NA              |
| Alimony                |             | NA              |
| Support                |             | NA              |
| Car payment            |             | NA              |
| Groceries              |             | NA              |
| Utilities              |             | NA              |
| Other                  | 5000 / 7000 | NA              |

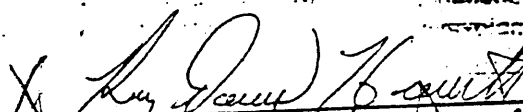
In support of this request, I have answered the above questions relating to my ability to pay. I swear that these answers are true and reflect my present financial status. I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

I further understand and acknowledge that if the Court appoints an attorney to represent me, the Court may require me to pay the fees and expenses of my court-appointed-counsel.

Sworn to and subscribed before me this

22<sup>nd</sup> day of Oct 2001
  
 Notary

Affiant Signature

  
 Heath David Roy  
 A.S.# 217244

## ORDER

IT IS ORDERED THAT THE FOREGOING REQUEST BE:

☒ GRANTED☐ DENIED

## APPOINTMENT OF ATTORNEY:

IT IS THEREFORE, ORDERED AND ADJUDGED BY THE COURT THAT

Charles Floyd,

JR Attorney at Law, be and is hereby appointed as counsel to represent, assist and defend in this (these) case(s).

It is further ordered that the Court reserves the right and may order reimbursement of attorney's fees and expenses, approved by the Court and paid to the appointed counsel.

DONE this 29<sup>th</sup> day of October 2001
  
 Judge

ACR371

ALABAMA JUDICIAL DATA CENTER  
NOTICE OF APPEAL TO THE ALABAMA COURT OF CRIMINAL APPEALS  
BY THE TRIAL COURT CLERK

000103

IN THE CIRCUIT COURT OF JUDGE: GEORGE R. GREENE  
STATE OF ALABAMA VS HEATH ROY DAVID

APPEAL DATE: 07/11/2001

|  |       |     |       |    |
|--|-------|-----|-------|----|
| INDIGENCY STATUS:                              | ----- | YES | --X-- | NO |
| GRANTED INDIGENCY STATUS AT TRIAL COURT:       | ----- | YES | --X-- | NO |
| APP. TRIAL COUNSEL PERMITTED TO W/D ON APPEAL: | ----- | YES | --X-- | NO |
| INDIGENT STATUS REVOKED ON APPEAL:             | --X-- | YES | ----- | NO |
| INDIGENT STATUS GRANTED ON APPEAL:             | ----- | YES | ----- | NO |

DEATH PENALTY: NO

APPEAL TYPE: OTHER(SPECIFY) -----

THIS APPEAL IS FROM AN ORDER DENYING A PETITION (I.E., RULE 32 PETITION, WRIT OF HABEAS CORPUS, ETC) OR FROM ANY OTHER ISSUED BY THE TRIAL JUDGE.

CO/CASE NUMBER: 57/CC 2001 000036.00

ORDER ENTERED(DATE): 04092001 PETITION: ----- DISMISSED ----- DENIED ----- GRANTED

THIS IS AN APPEAL FROM A CONVICTION.

DATE OF CONVICTION: 04/09/2001

DATE OF SENTENCE: 05/31/2001

YOUTHFUL OFFENDER STATUS: DENIED

CO/CASE NUMBER: 57/CC 2001 000036.00  
CODE: UDCS CONVICTION: UNLAW DISTRIB COACTION: GUILTY PLEA  
STATUTE: 13A-012-211  
ACTION: GUILTY PLEA  
STATUTE: 13A-012-213

CODE: VAPF CONVICTION: POSS MARIJUANA 1

SENTENCE: CONF: 30 YRS 00 MOS 000 DAYS  
SENTENCE: PROB: 00 YRS 00 MOS 000 DAYS

LIFE: NO LIFEWO: NO

|                                |          |
|--------------------------------|----------|
| POST-JUDGMENT MOTIONS FILED:   | DT FILED |
| --- MOTION FOR NEW TRIAL       | -----    |
| --- MOTION FOR JUDG. OF ACQUIT | -----    |
| --- MOTION TO W/D GUILTY PLEA  | -----    |
| --- MOTION FOR ATTY TO W/DRAW  | -----    |
| --- OTHER                      | -----    |

DT DENIED CON BY AGREE

COURT REPORTER(S):  
ADDRESS:WILSON, LINDA S.  
C/O HON. GEORGE R. GREENE  
PHENIX CITY, AL 36867APPELLATE COUNSEL #1:  
ADDRESS:FLOYD CHARLES EDDIE III  
P. O. BOX 759

PHONE NUMBER:

PHENIX CITY, AL 36868  
205-297-3378APPELLATE COUNSEL #2:  
ADDRESS:

PHONE NUMBER:

APPELLANT (PRO SE):  
ADDRESS:HEATH ROY DAVID  
3 TRAPPER DRIVE  
PHENIX CITY, AL 368670000

AIS #:

APPELLEE (IF CITY APPEAL):  
ADDRESS:I CERTIFY THAT THE INFORMATION PROVIDED  
ABOVE IS ACCURATE TO THE BEST OF MY  
KNOWLEDGE AND I HAVE SERVED A COPY OF  
THIS NOTICE OF APPEAL ON ALL PARTIES TO  
THIS ACTION ON THIS 30th DAY OF Oct, 2001OPERATOR: SHG  
PREPARED: 10/30/2001Kathy Carter  
CIRCUIT COURT CLERK

MOTION TO COURT OF CRIMINAL  
APPEALS FOR EXTENSION OF TIME  
TO FILE TRANSCRIPT

000104

TO: The Clerk of the Court of Criminal Appeals  
P. O. Box 301555  
Montgomery, Alabama 36130-1555

Fax: (334) 242-4689

Criminal Appeals Case Number

CR 00-2143

Roy David Heath  
Appellant's Name

v. State of Alabama  
Appellee

Trial Court Case No. CC01-30Notice of Appeal Date 7/11/01

On appeal from the:



Circuit Court of



District Court of



Juvenile Court of

Russell County

I, Linda Wilson, a court reporter in the above referenced case,  
hereby request a 28- day extension to complete the transcript in said cause for the reasons  
I have set out below. Currently this transcript is due on 10/31/01, and with this extension  
the transcript will be due on 11/28/01.

REASONS:

FILED IN OFFICE  
2001 OCT 30 PM 5:01  
CLERK OF DIST. COURT  
RUSSELL CO., AL

Linda Wilson  
Court Reporter

10/30/01  
Date

Note: Rule 11(c) of the Alabama Rules of Appellate Procedure prohibits an appellate court from granting an extension if the request is not received by the clerk of the appellate court within the time originally prescribed or before the expiration of an extension previously granted. Based on internal

COURT OF CRIMINAL APPEALS  
STATE OF ALABAMA  
JUDICIAL BUILDING, 300 DEXTER AVENUE  
P.O. BOX 301555  
MONTGOMERY, AL 36130-1555

000105

H. W. "Bucky" McMILLAN  
Presiding Judge  
SUE BELL COBB  
PAMELA W. BASCHAB  
GREG SHAW  
A. KELLI WISE  
Judges

October 30th, 2001

Lane W. Mann  
Clerk  
Wanda K. Ivey  
Assistant Clerk  
(334) 242-4590  
FAX (334) 242-4689

RE: CR-00-2143

Roy David Heath v. State of Alabama (Appeal from Russell Circuit Court: CC01-30; CC01-36).

You are hereby notified that the following action was taken in the above cause by the Court of Criminal Appeals:

Additional time is granted to certify the completion of reporter's transcript to and including 11/28/2001.

Lane W. Mann, Clerk  
Court of Criminal Appeals

LWM/sm

cc: Honorable George R. Greene, Circuit Judge  
Honorable Kathy S. Coulter, Circuit Clerk ✓  
Linda S. Wilson, Court Reporter  
Roy David Heath, Pro Se, Appellant

|  |   |                                     |
|--|---|-------------------------------------|
| State of Alabama<br>Unified Judicial System<br>Form ARAP- 14 11/91 | <b>CERTIFICATE OF COMPLETION AND<br/>TRANSMITTAL OF RECORD ON<br/>APPEAL BY TRIAL CLERK</b> | Appellate Case Number<br>CR 00-2143 |
|--|---|-------------------------------------|

TO: THE CLERK OF  
THE COURT OF CRIMINAL APPEALS OF ALABAMADATE OF  
NOTICE OF APPEAL: JULY 11, 01

APPELLANT

ROY DAVID HEATH

V. STATE OF ALABAMA

I certify that I have this date completed and transmitted herewith to the appellate court the record on appeal by assembling in (a single volume of 106 pages) (        volumes of 200 pages each and one volume of        pages) the clerk's record and the reporter's transcript and that one copy each of the record on appeal has been served on the defendant and the Attorney General of the State of Alabama for the preparation of briefs.

I certify that a copy of this certificate has this date been served on counsel for each party to the appeal.

Dated this 30TH day of NOVEMBER, 192001.

  
Circuit Clerk

RUSSELL COUNTY, ALABAMA

|  |  |   |
|--|--|---|
| State of Alabama<br>Unified Judicial System<br>Form ARAP-1C 8/91 | <b>REPORTER'S TRANSCRIPT ORDER -- CRIMINAL</b><br>See Rules 10(c) and 11(b) of the<br>Alabama Rules of Appellate Procedure (A.R. App.P.) | Criminal Appeal Number<br><u>CR - 00-2143</u> |
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BE COMPLETED BY COUNSEL FOR THE APPELLANT OR BY THE APPELLANT IF NOT REPRESENTED AND FILED WITH THE WRITTEN NOTICE OF APPEAL OR FILED WITHIN 7 DAYS AFTER ORAL NOTICE OF APPEAL IS GIVEN.

☐ CIRCUIT COURT ☒ DISTRICT COURT ☐ JUVENILE COURT OF Russell COUNTY  
Roy David Heath, Appellant

V. ☒ STATE OF ALABAMA ☐ MUNICIPALITY OF \_\_\_\_\_

|   |  |
|---|--|
| Case Number<br><u>57/CC 2001 000030.00/36</u>                   | Date of Judgment/Sentence/Order<br><u>5/31/01</u>  |
| Date of Notice of Appeal<br>Oral: _____ Written: <u>7/11/01</u> | Indigent Status Granted: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

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Signature \_\_\_\_\_ Date \_\_\_\_\_ Print or Type Name \_\_\_\_\_

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- A. ☒ TRIAL PROCEEDINGS - Although this designation will include the judgment and sentence proceedings, a transcript of the organization of the jury and arguments of counsel must be designated separately.
- B. ☒ ORGANIZATION OF THE JURY - This designation will include voir dire examination and challenges for cause. Note that in noncapital cases the voir dire of the jury will not be recorded unless the trial judge so directs (See Rule 19.4, ARCP.)
- C. ☒ ARGUMENTS OF COUNSEL - Note that in noncapital cases the arguments of counsel will not be recorded unless the trial judge so directs (See Rule 19.4, ARCP.)

COURT REPORTER(S)

Linda S. Wilson

IN ADDITION TO ANY PROCEEDINGS DESIGNATED ABOVE, SPECIAL REQUEST IS HEREBY MADE TO INCLUDE THE FOLLOWING PROCEEDINGS IN THE REPORTER'S TRANSCRIPT PORTION OF THE RECORD ON APPEAL. (ATTACH ADDITIONAL PAGES IF NECESSARY):

| ADDITIONAL PROCEEDINGS REQUESTED | DATE  | COURT REPORTER(S) |
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| D. _____                         | _____ | _____             |
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| F. _____                         | _____ | _____             |
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Signature Roy David Heath Date 8/9/01 Print or Type Name Roy David Heath

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STATE OF ALABAMA  
IN THE CIRCUIT COURT FOR THE COUNTY OF RUSSELL  
TWENTY-SIXTH JUDICIAL CIRCUIT  
CRIMINAL

STATE OF ALABAMA

v.

Case No. CC 01-30  
CC 01-36

ROY DAVID HEATH,

Defendant.

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REPORTER'S OFFICIAL TRANSCRIPT

Before:

Honorable George R. Greene  
Phenix City, Alabama - April 9, 2001

APPEARANCES:

For the State:  
Buster Landreau, Esq.  
Chief Deputy District Attorney

For the Defendant:  
John M. Britton, Esq.  
Phenix City, Alabama

Linda S. Wilson  
Official Court Reporter

1 THE COURT: This will apply to each  
2 defendant in each case. Under the Constitution  
3 of the United States and the Constitution and  
4 laws of the State of Alabama, you have a right to  
5 remain silent and you may not be compelled to  
6 give evidence against yourself. Your attorney  
7 cannot disclose any confidential talks he or she  
8 has had with you. You are not required to answer  
9 any questions. If you do answer questions  
10 knowing that have you a right to remain silent,  
11 you will have waived this right.

12 You have the right to enter and continue to  
13 assert a plea of not guilty or not guilty by  
14 reason of mental disease or defect and have a  
15 public trial before a duly selected jury. The  
16 jury would decide your guilt or innocence based  
17 upon the evidence presented before them. If you  
18 elect to proceed to trial, you would have the  
19 right to be present, you would have the right to  
20 have your attorney present to assist you, you  
21 would have the right to confront and  
22 cross-examine your accuser or accusers and all  
23 the State's witnesses, you would have the right  
24 to subpoena witnesses to testify on your behalf  
25 and to have their attendance in court and their

1 testimony required by the Court, and you would  
2 have the right to take the witness stand and to  
3 testify, but only if you chose to do so, as no  
4 one can require you to do this. If you elect to  
5 testify, you can be cross-examined by the State  
6 just as any other witness is subjected to  
7 cross-examination. If you decide not to testify,  
8 no one but your attorney will be allowed to  
9 comment about that fact to the jury. Your  
10 attorney is bound to do everything he or she can  
11 reasonably and honorably do to see that you  
12 obtain a fair and impartial trial.

13 If you elect to proceed to trial, you come  
14 to court presumed to be innocent. The  
15 presumption of innocence will follow you  
16 throughout the trial until the State produces  
17 sufficient evidence to convince the jury or the  
18 Court, if the trial should be a non-jury trial,  
19 of your guilt beyond a reasonable doubt. You  
20 have no burden of proof in any of these cases.  
21 If the State fails to meet its burden, you would  
22 be found not guilty.

23 If any of you are entering a plea of guilty  
24 to a charge for which you have not yet been  
25 indicted, you are waiving indictment by a grand

1 jury and will be pleading guilty to a charge  
2 preferred against you by the District Attorney's  
3 office which is an information which will be  
4 filed with the Court.

5 If you plead guilty in any of these cases,  
6 there will be no trial, you'd be waiving the  
7 rights outlined above, except your rights  
8 relating to representation by an attorney, the  
9 State will have nothing to prove and you will be  
10 convicted and sentenced based upon your guilty  
11 plea. You will, however, still have the right of  
12 appeal.

13 If any of you are convicted of an offense  
14 involving which would be alcohol or drug related,  
15 you will be required to undergo an evaluation for  
16 substance abuse. Based upon the results of any  
17 such evaluation, you will be required to complete  
18 the recommended course of education and/or  
19 treatment and to pay for the evaluation and any  
20 cost of program to which you're referred.  
21 Failure to submit to an evaluation or failure to  
22 complete any program to which you may be referred  
23 will be considered a violation of any probation  
24 or parole you may be granted. You may also be  
25 required to attend monitoring sessions, including

1 random drug and alcohol testing or blood, urine  
2 and/or breath test and to pay a fee for this  
3 service. You may request a waiver of part or all  
4 of the fees assessed if you're indigent or for  
5 any portion of time you're financially unable to  
6 pay. Community service may be ordered by the  
7 Court in lieu of the monetary payment of fees.

8 Under the Drug Demand Reduction Assessment  
9 Act and loss of driving privilege under that Act,  
10 Section 13A-12-281 provides that if you're  
11 convicted of a violation of Section 13A-12-202,  
12 Section 13A-12-203, 204, 213, 215 of possession  
13 of a controlled substance by a person over the  
14 age of 18, or Section 13A-12-223, you should be  
15 assessed an additional fee of \$1,000.00 if you're  
16 a first-time offender or \$2,000.00 if you're a  
17 repeat offender under one of these sections.  
18 Collection of all or part of the penalty will be  
19 suspended if, with Court approval, you enter a  
20 drug rehabilitation program and if you agree to  
21 pay for a part or all the program costs. Upon  
22 successful completion of the program, you may  
23 apply to the Court to reduce the penalty by the  
24 amount actually paid by you for participation in  
25 the program. Any suspension of the penalty may

1 be withdrawn by the Court if you fail to enroll  
2 in or successfully pursue or otherwise fail to  
3 complete an approved program.

4 In addition, pursuant to Section 13A-12-214,  
5 you will lose your privilege to drive a motor  
6 vehicle for a period of six months which shall be  
7 in addition to any suspension or revocation  
8 otherwise provided by law.

9 THE COURT: Mr. Heath also has two  
10 indictments which have been returned to him, and  
11 the indictments in Case Number CC 2001-36 is a  
12 two-count indictment. In Case Number CC 2001-30,  
13 the Defendant, Roy D. Heath, is charged with the  
14 unlawful distribution of marijuana, a controlled  
15 substance. The indictment alleges that he did  
16 unlawfully sell, furnish, give away, manufacture,  
17 deliver or distribute marijuana, a controlled  
18 substance, in violation of Section 13A-12-211 of  
19 the Code of Alabama of 1975, as amended. The  
20 charge of unlawful distribution of a controlled  
21 substance is a Class B felony with a possible  
22 sentencing range for a first time offender being  
23 not less than two, no more than 20 years  
24 imprisonment in the state penitentiary, and a  
25 fine of up to but not more than \$10,000.00 could

1 be imposed.

2 In Case Number CC 2001-36, in Count 1 of the  
3 indictment, the Defendant is charged with the  
4 offense of unlawful distribution of marijuana, a  
5 controlled substance, and that indictment alleges  
6 that he did unlawfully sell, furnish, give away,  
7 manufacture, deliver or distribute marijuana, a  
8 controlled substance, in violation of Section  
9 13A-12-211 of the Alabama Code. It also is a  
10 Class B felony.

11 Count 2 of the indictment alleges that Roy  
12 D. Heath did possess marijuana, a controlled  
13 substance, for other than his personal use, in  
14 violation of Section 13A-12-213 of the Code of  
15 Alabama of 1975, and Count 2 of the indictment is  
16 a Class C felony with a possible sentencing range  
17 for a first time offender being not less than one  
18 year and one day, no more than 10 years  
19 imprisonment in the state penitentiary, and may  
20 include a fine of up to but not more than  
21 \$5,000.00.

22 It, however, is stipulated that the  
23 Defendant has three prior felony convictions, and  
24 he would fall under Alabama's Habitual Offender  
25 Law with a possible sentencing range for a Class

1 B felony being for a term of not less than 20  
2 years or mandatory life imprisonment or a fine of  
3 up to \$20,000.00, and the punishment for a Class  
4 C felony as an habitual offender would be not  
5 less than 15, no more than 99 years or life in  
6 the state penitentiary, and a fine of up to  
7 \$20,000.00 could be imposed as well as a Victims  
8 Compensation Fund fee of not less than 50, no  
9 more than \$10,000.00, could be imposed.

10 Section 13A-12-250 and Section 13A-12-270  
11 would apply in these cases. Under Section  
12 13A-12-250 of the Code of Alabama, that section  
13 provides that any person who is convicted of  
14 unlawfully selling any controlled substance  
15 within a three-mile radius of a public or private  
16 school, college, university or other educational  
17 institution must be punished by an additional  
18 penalty of five years imprisonment in a state  
19 correctional facility for each violation. This  
20 period of imprisonment is mandatory and the  
21 punishment imposed shall not be suspended or  
22 probation granted.

23 Section 13A-12-270 of the Alabama Code  
24 provides that any person who is convicted of  
25 unlawfully selling any controlled substance

1 within a three-mile radius of a public housing  
2 project owned by a Housing Authority must be  
3 punished by an additional penalty of five years  
4 imprisonment in a state correctional facility for  
5 each violation. This period of imprisonment is  
6 mandatory and the punishment imposed shall not be  
7 suspended or probation granted.

8 The Drug Demand Reduction Assessment Act  
9 applies as well as the loss of driving privilege  
10 and the section I previously read out on alcohol  
11 or drug-related offenses applies.

12 What grade did you last complete in school,  
13 Mr. Heath?

14 THE DEFENDANT: Tenth.

15 THE COURT: Can you read, write and  
16 understand the English language?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is there anything about this  
19 Explanation of Rights and Plea of Guilty form  
20 that I've read or explained to you or that Mr.  
21 Britton has read or explained to you that you  
22 don't understand?

23 THE DEFENDANT: No, sir.

24 THE COURT: Do you have any questions about  
25 this Explanation of Rights form?

1 THE DEFENDANT: No, sir.

2 THE COURT: Has anyone offered you any  
3 promise or inducement or hope of reward to entice  
4 you to enter into a plea of guilty to each of  
5 these three cases?

6 THE DEFENDANT: No, sir.

7 THE COURT: Has anybody threatened or  
8 coerced you in any way to force you to enter into  
9 a plea of guilty?

10 THE DEFENDANT: No, sir.

11 THE COURT: This is a knowing and voluntary  
12 entry of plea of guilty on your part to both  
13 counts of distribution of marijuana as well as  
14 unlawful possession of marijuana in the first  
15 degree, a controlled substance? You're entering  
16 a plea of guilty voluntary to each of these three  
17 cases and that you're doing so knowingly and  
18 voluntarily?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: The indictments that I read out  
21 to you, two of them charge you with unlawful  
22 distribution of a controlled substance,  
23 marijuana, and prior to your arrest -- what date  
24 does the State allege that the sale in Case  
25 Number CC 2001-30 took place?

1 MR. LANDREAU: April 28th, 2000.

2 THE COURT: Did you on or about April the  
3 28th of the year 2000 sell marijuana to someone?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Where were you at the time?

6 THE DEFENDANT: At a rental property I had  
7 at 915 13th Avenue.

8 THE COURT: And that's in Phenix City and  
9 Russell County, Alabama?

10 THE DEFENDANT: Uh-huh (positive response.)

11 THE COURT: Did you have marijuana in your  
12 possession at the time?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And did you sell marijuana to  
15 someone else?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Who did you sell it to?

18 THE DEFENDANT: To an undercover officer.

19 THE COURT: How much did you sell?

20 THE DEFENDANT: A pound.

21 THE COURT: And for how much?

22 THE DEFENDANT: I don't know. I don't  
23 directly know.

24 MR. LANDREAU: Judge, I believe Mr. Heath is  
25 mistaken. The pound occurred on the second

1 sale. The first sale was 27.62 grams which is  
2 roughly one ounce.

3 MR. BRITTON: Right. There were two  
4 separate cases.

5 MR. LANDREAU: There were two different  
6 sales.

7 THE COURT: Did you sell one ounce of  
8 marijuana?

9 THE DEFENDANT: Right.

10 THE COURT: And how much did you receive for  
11 that?

12 THE DEFENDANT: 120, I think.

13 THE COURT: About \$20.00?

14 MR. BRITTON: \$120.00, Judge.

15 THE DEFENDANT: 120.

16 THE COURT: \$120.00. And you knew that you  
17 did not have any right to sell the marijuana?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Are you guilty of the offense of  
20 unlawful distribution of marijuana in Case Number  
21 CC 2001-30?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: To that charge, how do you  
24 plead, guilty or not guilty?

25 THE DEFENDANT: Guilty.

1 THE COURT: When does the State allege the  
2 offense occurred in Case Number 2001-36?

3 MR. LANDREAU: May 4th of 2000. The amount  
4 involved would be one pound.

5 THE COURT: All right. Did you agree to  
6 sell one pound of marijuana on or about May 4th  
7 of the year 2000?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Where did that take place?

10 THE DEFENDANT: 915 13th Avenue.

11 THE COURT: Same location in Russell County?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And who was it that you agreed  
14 to sell marijuana to then?

15 THE DEFENDANT: Undercover.

16 THE COURT: And did you, in fact, sell that  
17 marijuana?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And how much did you receive for  
20 that one pound of marijuana?

21 THE DEFENDANT: I don't know. I never did  
22 receive the money yet before they got me.

23 THE COURT: Well, did you negotiate a price?

24 THE DEFENDANT: A thousand, I think.

25 THE COURT: \$1,000.00 for the pound? And

1 did you actually deliver the marijuana to  
2 someone?

3 THE DEFENDANT: It was delivered to them.

4 THE COURT: Are you guilty of the offense of  
5 unlawful distribution of marijuana, a controlled  
6 substance, in that case?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: To that charge, how do you  
9 plead, guilty or not guilty?

10 THE DEFENDANT: Guilty.

11 THE COURT: Did you have other marijuana in  
12 your possession other than the pound that you  
13 tried to sell?

14 THE DEFENDANT: No, sir.

15 THE COURT: What does the State allege in  
16 Count 2 is the reason they're proceeding on the  
17 possession charge?

18 MR. LANDREAU: One moment, Your Honor.  
19 Judge, this sale was set up at his home. It did  
20 involve an amount of one pound. The arrest was  
21 made at that time, and as I recall, there was  
22 some additional marijuana located in a gym bag  
23 which Mr. Heath indicated was his bag.

24 THE DEFENDANT: Yeah.

25 THE COURT: And how much was in that gym

1 bag?

2 THE DEFENDANT: I have no idea.

3 THE COURT: Was that yours?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Did you know it was marijuana?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Was it in bags or was it rolled  
8 in cigarettes? How was it contained?

9 THE DEFENDANT: It was in bags, I think.

10 THE COURT: And that's at your residence in  
11 Russell County?

12 THE DEFENDANT: Yeah. It was in the car, I  
13 think.

14 THE COURT: Are you guilty of the offense of  
15 unlawful possession of marijuana in the first  
16 degree in Count 2 of the indictment?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: To that charge, how do you  
19 plead, guilty or not guilty?

20 THE DEFENDANT: Guilty.

21 THE COURT: Is there anything about the  
22 charge of distribution of a controlled substance  
23 or possession of a controlled substance that you  
24 don't understand?

25 THE DEFENDANT: No, sir.

1 THE COURT: Any questions about the charges  
2 pending against you?

3 THE DEFENDANT: No, sir.

4 THE COURT: The plea bargain agreement that  
5 I have before me indicates that upon your plea of  
6 guilty in each of these cases, the State would  
7 recommend that you be sentenced to 30 years in  
8 the custody of the Commissioner of the Department  
9 of Corrections, that you pay the court costs of  
10 each case, a \$1,000.00 penalty mandated by the  
11 Demand Reduction Assessment Act.

12 Do any of your previous convictions involve  
13 sale or use of drugs?

14 THE DEFENDANT: No, sir.

15 THE COURT: So the \$1,000.00 penalty would  
16 apply. You would be ordered to pay a \$100.00  
17 Forensic Science Fund fee and a \$100.00 Victims  
18 Compensation Fund fee, and your driver's license  
19 would be suspended and that would apply in each  
20 of the three counts.

21 The 30 years shall consist of 20 years for  
22 violation of Section 13A-12-211, an additional  
23 five years mandated by Section 13A-12-250 for the  
24 sale of a controlled substance at or near a  
25 school campus, an additional five years mandated

1 by Section 13A-12-270 for the sale of a  
2 controlled substance at or near a public housing  
3 project, and for purposes of this plea, the  
4 Defendant agrees to stipulate that the act  
5 occurred within three miles of both a school and  
6 a housing project and the State of Alabama would  
7 not have to make further proof of that. The same  
8 sentence would apply in Count 1 of Case Number CC  
9 2001-36.

10 In Count 2 of the indictment, the State  
11 would recommend that the Defendant be sentenced  
12 to 30 years concurrent with the sentences imposed  
13 in the other cases, he pay the court costs, the  
14 \$1,000.00 penalty mandated by the Demand  
15 Reduction Assessment Act, a \$100.00 Forensic  
16 Science Fund fee and a \$100.00 Victims  
17 Compensation Fund fee, and his license would be  
18 revoked for a period of six months in that case  
19 as well. It's stipulated that the Defendant has  
20 three prior felony convictions and the State  
21 would not have to make any further proof of those  
22 convictions.

23 The Defendant would be ordered to make  
24 payments on his fines, court costs and  
25 restitution at the rate of at least \$100.00 per

1 month beginning 90 days after his release from  
2 confinement or on the placing of any work release  
3 program. Failure to make those payments as  
4 ordered could result in a 30 percent collection  
5 fee being added to any balance which is 90 days  
6 past due as well as a wage withholding order  
7 could be issued for that past due balance.

8 By entering into this plea bargain  
9 agreement, the Defendant agrees in each of these  
10 three counts of the two indictments not to file  
11 any post-conviction petition or remedy, including  
12 the filing of a Rule 32 petition, a motion to set  
13 aside his plea of guilty or any sentence that may  
14 be imposed, or an appeal of any conviction that  
15 may be imposed in each of these cases, and if he  
16 does so, then the cases could be restored to the  
17 trial docket.

18 One thing that I will point out to the  
19 Defendant that is not part of the plea bargain  
20 agreement but could be part of the sentencing it  
21 would impose, because these two sales took place  
22 on separate and distinct occasions, it could be  
23 that the sentences could run concurrent with each  
24 other or consecutive with each other, concurrent  
25 meaning the sentences could run at the same

1 time. Consecutive meaning you could serve  
2 one-third of your sentence and then after you  
3 finish that, you would serve another 30-year  
4 sentence which would, in effect, double the  
5 amount of time that you would be ordered to serve  
6 in jail. It's stipulated, however, by the  
7 agreement that all sentences would run concurrent  
8 with each other.

9 Is there anything about this plea bargain  
10 agreement that you don't understand, Mr. Heath?

11 THE DEFENDANT: No, sir.

12 THE COURT: Any questions about it?

13 THE DEFENDANT: No, sir.

14 THE COURT: Are you satisfied with the legal  
15 representation you've received from Mr. Britton  
16 in these cases?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And are you satisfied with the  
19 plea bargain agreement that's been negotiated on  
20 your behalf?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you understand that the 30  
23 years is the minimum sentence that you could  
24 receive in each of -- in two of these cases?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And then the minimum sentence on  
2 the possession case would have been 15 to 99?

3 MR. BRITTON: Yes, sir.

4 THE COURT: Court then would accept your  
5 plea of guilty and would adjudicate you guilty of  
6 the two counts of unlawful distribution of  
7 marijuana, a controlled substance, and also of  
8 unlawful possession of marijuana in the first  
9 degree.

10 Do you wish to have a pre-sentence report  
11 completed in this matter?

12 MR. BRITTON: Yes, we do, Your Honor. Yes,  
13 sir, Your Honor.

14 THE COURT: I would direct that a  
15 pre-sentence report be completed in this matter,  
16 and the cases would be set for sentencing on May  
17 31st and that will be at 9:30 a.m.

18 MR. BRITTON: Thank you very much, Judge.

19 THE COURT: He'll need to meet with the  
20 probation officer before he leaves.

21 MR. BRITTON: Yes, sir.

22 (End of proceedings.)  
23  
24  
25

STATE OF ALABAMA  
IN THE CIRCUIT COURT FOR THE COUNTY OF RUSSELL  
TWENTY-SIXTH JUDICIAL CIRCUIT  
CRIMINAL

STATE OF ALABAMA

v.

Case No. CC 01-30  
CC 01-36

ROY DAVID HEATH,

Defendant.

---

S E N T E N C I N G

Before:

Honorable George R. Greene  
Phenix City, Alabama - May 31, 2001

APPEARANCES:

For the State:  
Buster Landreau, Esq.  
Chief Deputy District Attorney

For the Defendant:  
John M. Britton, Esq.  
Phenix City, Alabama

Linda S. Wilson  
Official Court Reporter

1 THE COURT: Roy D. Heath?

2 (Defendant approaches the bench.)

3 THE COURT: This matter was set for  
4 sentencing. Does Mr. Heath have anything to  
5 present in either of the cases, CC 2001-30, 36,  
6 Count 1 or Count 2?

7 MR. BRITTON: I believe Mr. Heath wants to  
8 say something to the Court.

9 THE DEFENDANT: Sir, I was going to ask you,  
10 could you give me a little more time before you  
11 put me in jail because my mom, she's hurt real  
12 bad, and I ain't been able to tell her I'm going  
13 to jail. They've got her in CCU in Birmingham,  
14 and I can't tell her that I'm going away for a  
15 while. She won't be able to see me because she  
16 can't get around after she gets out, if she gets  
17 out, and I need a little more time with her.

18 THE COURT: Well, I'm going to decline to  
19 continue this any further. Is there anything  
20 else you want to say?

21 THE DEFENDANT: Decline, what do you mean?

22 MR. BRITTON: Is there anything else you  
23 want to say?

24 THE DEFENDANT: Yes, sir. I need to stay  
25 out and see my mom so I can tell her.

1 THE COURT: Well, people stay out of jail  
2 don't need to be selling drugs.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: That was the priority and that's  
5 what you should have thought of before you were  
6 out selling drugs.

7 THE DEFENDANT: Yes, sir. But I need to --  
8 I need a little more time so I can be with her.  
9 They've got her on life support.

10 THE COURT: What about no did you not  
11 understand?

12 THE DEFENDANT: I understand, sir. I don't  
13 wish to withdraw my plea in order to stay out,  
14 but if that will help me stay out, I got to do  
15 that, too. I don't want to, but --

16 THE COURT: All right. Court at this time  
17 in Case Number CC 2001-30, having previously  
18 adjudicated the Defendant guilty of the offense  
19 of unlawful distribution of marijuana, a  
20 controlled substance, would sentence the  
21 Defendant to 30 years in the custody of the  
22 Commissioner of the Department of Corrections.  
23 The 30-year sentence would include a five-year  
24 enhancement pursuant to Section 13A-12-270 of the  
25 Alabama Code, an additional five years

1 enhancement pursuant to Section 13A-12-250 of the  
2 Alabama Code. That sentence would run concurrent  
3 with any sentences imposed in Case Number  
4 CC 2001-36, Counts 1 and 2.

5 Defendant would be ordered to pay the court  
6 costs of this case, would be assessed a \$100.00  
7 Victims Compensation Fund fee, and would be  
8 assessed a \$1,000.00 penalty mandated by the  
9 Demand Reduction Assessment Act. He'll be  
10 ordered to pay the \$100.00 Forensic Services  
11 Trust Fund fee.

12 As a part of this sentence, he'll be  
13 required to undergo treatment in a substance  
14 abuse program while in the custody of the  
15 Commissioner of the Department of Corrections.  
16 His driver's license would be suspended for a  
17 period of six months. And in all three of these  
18 cases, he's to reimburse the State of Alabama the  
19 cost of appointed counsel, if any. And as a  
20 condition of parole, participation in an early  
21 release, S.I.R. or work release program, he's to  
22 pay all court-ordered monies.

23 In Case Number CC 2001-36, the Court having  
24 previously adjudicated the Defendant guilty of  
25 the offense of unlawful distribution of

1 marijuana, would sentence the Defendant to 30  
2 years in the custody of the Commissioner of the  
3 Department of Corrections. That sentence would  
4 include five years enhancement pursuant to  
5 Section 13A-12-270, an additional five years  
6 enhancement pursuant to Section 13A-12-250, and  
7 again, the sentences would run concurrent with  
8 any sentence imposed in Case Number CC 2001-30  
9 and 2001-36, Count 2. The Defendant will be  
10 given credit for any time served in jail.

11 He's ordered to pay the court costs of this  
12 case, a \$100.00 Victims Compensation Fund fee,  
13 and would be assessed a \$1,000.00 penalty  
14 mandated by Section 13A-12-280 of the Demand  
15 Reduction Assessment Act. He would be ordered to  
16 pay the \$100.00 Forensic Services Trust Fund fee,  
17 and shall undergo a substance abuse program and  
18 treatment while in the custody of the  
19 Commissioner of the Department of Corrections.

20 In Case Number CC 2001-36, Count 2, the  
21 Defendant having previously been convicted of the  
22 offense of unlawful possession of marijuana in  
23 the first degree, Court would sentence him to 30  
24 years in the custody of the Commissioner of the  
25 Department of Corrections. That sentence would

1 run concurrent with the sentences previously  
2 imposed in Cases Number CC 2001-30 and 2001-36,  
3 Count 1. Again, he'll be given credit for time  
4 served against all three cases.

5 He's ordered to pay the court costs of this  
6 case, a \$100.00 Victims Compensation Fund fee,  
7 and would be assessed the \$1,000.00 penalty  
8 mandated by the Demand Reduction Assessment Act.  
9 And as a condition of a violation of the section  
10 in this case, he would be ordered to pay the  
11 \$100.00 Forensic Services Trust Fund fee. He'll  
12 be required to complete a substance abuse  
13 program, and his driver's license would be  
14 suspended for a period of six months.

15 In all three of these cases, the Defendant  
16 has the right to appeal his conviction and  
17 sentence, and if declared indigent, he has the  
18 right to appointed counsel and a court reporter's  
19 transcript would be provided without cost to  
20 him. Thank you.

21 MR. BRITTON: Thank you, Judge. Did you  
22 want to say something?

23 THE DEFENDANT: Yes, sir. Is there any way  
24 I can withdraw my plea, sir?

25 THE COURT: You'll need to file something in

1 writing, but you understand that that would set  
2 aside your plea bargain agreement where you would  
3 no longer get a minimum sentence, be eligible for  
4 that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay.

7 MR. BRITTON: Thank you, Judge.

8 (End of proceedings.)  
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CERTIFICATE OF COMPLETION OF REPORTER'S TRANSCRIPT

ROY DAVID HEATH,  
Appellant

v.

STATE OF ALABAMA

TO: The Clerk of the Court of  
Criminal Appeals of  
Alabama

On Appeal From the  
Circuit Court of Russell  
County

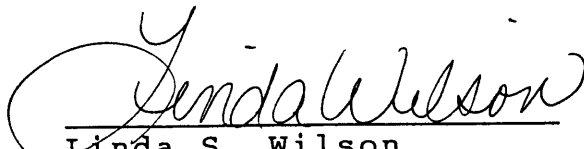
CASE NOS. CC 01-30 & 36

DATE OF NOTICE OF APPEAL:  
July 11, 2001

I certify that I have this date completed and filed with the clerk of the trial court the original of a true and correct transcript of the proceedings designated in the Reporter's Transcript Order. All pages are numbered serially, in the upper right corner of each page, prefaced by a copy of the Reporter's Transcript Order (Page No. 1) and an index, and ending with the number appearing in the upper right corner of this certificate.

I certify that a copy of this certificate is this date being served on counsel for defendant, the Attorney General of Alabama, and the District Attorney, along with a copy of the index.

DATED this 28th day of November, 2001.

  
Linda S. Wilson  
Official Court Reporter